

Thomas, Felicia

From: DeGering, Tracy
Sent: Thursday, May 09, 2013 2:40 PM
To: (b) (6)
Subject: RE: Individual Permit:

Hi Don,

Thank you for your patience while I inquired about the process for applying for an Individual Permit under the National Pollutant Discharge Elimination System. I was recently out of the office on furlough as well, so I apologize for the delay in getting back to you. I realize this has been a frustrating experience, but this is a new and changing process for our agency too; please bear with us.

Regarding your inquiry about an Individual Permit application, there are two forms to fill out: Form 1 (http://www.epa.gov/npdes/pubs/form_1.pdf) and Form 2D (<http://www.epa.gov/npdes/pubs/3510-2D.pdf>), both of which are also listed on the following website:
http://cfpub.epa.gov/npdes/doctype.cfm?sort=name&program_id=45&document_type_id=8.

I would like to warn you that Individual Permit applications require additional review and evaluation with significant wait times. Given the number of Individual Permit applications being processed for other EPA programs, and the fact that new Individual Permit applications are added to the end of this queue, it's not likely that you would receive authorization this mining season. Furthermore, the area* you propose to operate in has been designated by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) as critical habitat for steelhead, bull trout, and Chinook salmon, and the EPA would have to meet requirements of the Endangered Species Act (ESA) prior to issuing a permit. This would require additional analysis and consultation with both agencies. In order to inform your decision on how to proceed, you might wish to speak with the USFWS and NMFS regarding the process involved to meet ESA requirements, and likely outcomes. Our contact at NMFS for this action is Mr. Dave Mabe, 208-378-5696; our contact at USFWS for this action is Mr. Russ Holder, 208-378-5243 (both numbers are to their office's front desk).

*Please note: While the precise location of your dredging operation has not yet been provided to us, it is presumed to be along the stretch of the Salmon River that is open under the Idaho Dept of Water Resources' permit, near Riggins. Absent specific details, the above information should be considered general information; it is not a concrete determination from our agency.

Please let me know if you have any additional questions,

Tracy DeGering | (208) 378-5756

U.S. Environmental Protection Agency
Idaho Operations Office
950 W. Bannock Street, Suite 900
Boise, ID 83702
Fax: (208) 378-5744

From: (b) (6)
Sent: Wednesday, April 24, 2013 6:08 PM

To: DeGering, Tracy
Subject: Individual Permit:

Tracy,

I have been informed by Diane Green of the Idaho Dept. of Lands, through which party I have an active exploration/location lease, that I will need to apply for an individual permit. I am hereby requesting the individual permit, as I have been disqualified from the general permit and I have not violated the Clean Water Act. I am applying to dredge in the Salmon River and on State Lands. I would have gladly made this request one week ago on 4-17-2013, but instead you directed me to the State agency to be the initiating agency, and then told them that it was impossible. I am requesting the individual permit and could you please send it right away?

The Supreme Court has stated "...the transfer of polluted water between two parts of the same water body does not constitute a discharge of pollutants under the Clean Water Act. 541 U. S., at 109-112. We derive that determination from the CWA's text, which defines the term 'discharge of a pollutant' to mean '**any addition of any pollutant to** navigable water from any point source'. 33 U.S.C. ()1362(12). Under a common understanding of the meaning of the word 'add,' no pollutants are 'added' to a water body when water is merely transferred between different portions of that water body." The decision was unanimous and the Supreme Court case has a number and if you need the name, I can look it up for you.

If you intend to use the words, "rocks and sand", then I would suggest that you go to the Clean Rocks And Sand Act. I have informed you that the Clean Water Act is not to be used in this way.

Don Smith

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